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Before the  
Federal Communications Commission  
Washington, D.C. 20554

**ORIGINAL**

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FEDERAL COMMUNICATIONS COMMISSION  
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In re Applications of )  
 )  
AMERITECH CORP., )  
Transferor, )  
 )  
AND )  
 )  
SBC COMMUNICATIONS INC., )  
Transferee, )  
 )  
For Consent to Transfer Control of )  
Corporations Holding Commission Licenses )  
and Lines Pursuant to Sections 214 )  
and 310(d) of the Communications Act )  
and Parts 5, 22, 24, 25, 63, 90, 95 and 101 )  
of the Commission's Rules )

CC Docket No. 98-141  
ASD File No. 99-49

**COMMENTS OF  
RHYTHMS NETCONNECTIONS INC.**

Rhythms NetConnections Inc. and Rhythms Links Inc. (formerly ACI Corp.)  
(collectively "Rhythms") hereby submit these comments in response to the Commission's March  
17, 2000 Public Notice<sup>1</sup> requesting comment on SBC's 1999 Compliance Report (the "SBC  
Report").

The SBC Report covers a three-month period between the Commission's adoption of the  
*Merger Order*<sup>2</sup> on October 6, 1999 and December 31, 1999, including efforts completed as of the  
October 8, 1999 Merger Close Date ("MCD"). SBC reports that it "was required to meet over

<sup>1</sup> Public Notice, "Common Carrier Bureau Seeks Comment on SBC's 1999 Compliance Report" (DA 00-601) (rel. March 17, 2000).

<sup>2</sup> Applications of Ameritech Corp., Transferor, and SBC Communications, Inc., Transferee, For Consent to Transfer Control of Corporations Holding Commission Licenses and Lines Pursuant to Sections 214 and 310(d) of

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100 commitments during the first 90 days following the MCD”<sup>3</sup> and that it “has met these commitments.”<sup>4</sup> However, the commitments SBC was required to meet in the first 90 days following MCD focused almost entirely on processes and procedures. As of the end of 1999, and continuing to the present, SBC has developed a multitude of reports and organization charts, but made very little progress toward implementation of the substantive Merger Conditions. On the contrary, as Rhythms will illustrate in these comments, SBC’s has continued, over the past six months, to exploit the merged entity’s increased “incentives and ability to raise entry barriers to, and otherwise discriminate against, entrants into the local markets of these RBOCs.”<sup>5</sup>

## DISCUSSION

### Condition I: Separate Affiliate for Advanced Services

Condition I permits joint marketing of services by SBC incumbent LECs (“ILECs”) and their separate Advanced Services affiliate (“separate affiliate”). It also requires that ILECs provide unaffiliated carriers with access to the same loop information, via the same interfaces, available to ILEC service representatives and that the separate affiliate use the same interfaces, processes and procedures that are available to unaffiliated carriers when placing Advanced Services orders with the ILECs.

Notwithstanding this merger condition, and contrary to subsequent assurances to the Commission and to CLECs,<sup>6</sup> SBC has deployed a new interface, Advanced Services Order System (“ASOS”), which was developed to the specifications of the separate affiliate, and which

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the Communications Act and Parts 5, 22, 24, 25, 63, 90, 95 and 101 of the Commission’s Rules, CC Docket 98-141 (rel. October 8, 1999) (“*Merger Order*”).

<sup>3</sup> SBC Report, Executive Summary, at 4.

<sup>4</sup> *Id.*

<sup>5</sup> *Merger Order* at ¶ 3.

<sup>6</sup> Letter from SBC to Larry Strickling, Chief of the Common Carrier Bureau, February 16, 2000, at 3.

will not be made available to unaffiliated CLECs.<sup>7</sup> In addition, while SBC provides both unaffiliated CLECs and its separate affiliate with access to its Complex Products Service Order System (“CPSOS”) for loop prequalification, only the separate affiliate has access to CPSOS for ordering and order status.<sup>8</sup>

Condition III: Advanced Services OSS

SBC, citing the Merger Conditions, consistently maintained (through 1999 and well into 2000) that it has no obligation, under Condition 3 to enhance the Verigate or LEX interfaces widely used by CLECs for ordering xDSL and other Advanced Services Components, because only the EDI and DataGate interfaces are specifically mentioned in Condition 3.<sup>9</sup> The prospect that SBC would not enhance LEX or Verigate (interfaces typically used by new entrants and by smaller CLECs without the back office systems necessary to use EDI and Datagate) to include preorder and ordering for xDSL and other advanced services was disturbing, because it would exclude new entrants from the xDSL market. Only in late March did SBC agree to support the Verigate, LEX and WebGUI graphical interfaces.<sup>10</sup>

Despite SBC’s recent agreement to support and enhance Verigate and LEX, it is still far from clear whether those interfaces will be upgraded “in lockstep” with DataGate and EDI. SBC has consistently maintained that only EDI and DataGate are “within the scope” of the Advanced Services OSS Plan of Record (“POR”) and that issues related to Verigate and LEX are appropriately considered in the Uniform and Enhanced OSS POR. Because the two PORs are proceeding on separate tracks, with different timelines, there can be no assurance that upgrades

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<sup>7</sup> See “Notification of Final Status of Advanced Services OSS Plan of Record” (“CLEC Notification”) filed April 3, 2000 by Rhythms and other participating CLECs in CC Docket No. 98-141, at 12.

<sup>8</sup> *Id.* at 18.

<sup>9</sup> See, e.g., Rhythms’ January 31, 2000 Comments in CC Docket No. 00-4, at 28, n.126 and Attachment 7 thereto (January 6, 2000 Comments of Southwestern Bell Telephone Company Concerning Arbitration Award and Proposed Interconnection Agreement).

<sup>10</sup> See CLEC Notification, at 14.

and enhancements will proceed “in lockstep” or that CLECs who depend on Verigate and LEX will continue to have access to the same functionalities available to the separate affiliate.<sup>11</sup> In the Ameritech states, for example, loop qualification is still a manual process with a three-day turn-around. SBC’s timeline for implementing a graphical user interface for loop qualification in the Ameritech states is apparently not yet firmly established – CLECs have been given dates ranging from September 2000 to March 2001 – but either is unreasonably far in the future.

*Condition VIII : Uniform and Enhanced OSS*

Although SBC has commenced the process of developing a “uniform and enhanced OSS” in consultation with interested CLECs, as required by Merger Condition VIII, the process has slowed to a crawl. Recently, a three day meeting was scheduled, but so little new information was available from SBC in advance of that meeting that Rhythms understands that AT&T requested that it be shortened to a single day.

In addition, there are troubling signs that SBC may not deliver on its commitment to develop and deploy a single “uniform” OSS throughout its thirteen-state region. SBC contends that the Merger Conditions, at Paragraph 31, provide a loophole: SBC’s obligation to develop and deploy uniform business rules governing CLEC-submitted local service requests excludes differences caused by “state regulatory requirements” and “product definitions.” Instead of providing true parity and non-discrimination, SBC is using the “regulatory” and “product definition” exclusions to justify the development of multiple OSS “versions” that may vary considerably from state to state within the SBC region.<sup>12</sup> If SBC is successful in this effort, CLECs who have already undertaken the substantial effort of developing application-to-application EDI interfaces for preordering or ordering may be forced to incur the expense of

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<sup>11</sup> See Rhythms’ April 26 Comments on SBC’s Refiled Texas 271 Application, at 16-17.

<sup>12</sup> *Id.* at 17.

redesigning their software to accommodate substantial variations in the so-called “uniform” SBC OSS.

*Condition XII: Most-Favored-Nation Provisions for Out-of-Region and In-Region Arrangements*

In negotiations with Rhythms, SBC/Ameritech has taken the position that, under Paragraph 43 of the Merger Conditions, a CLEC may not adopt an entire agreement to which an SBC ILEC is a party for use in a different state. On January 6, Rhythms brought this issue to the attention of the Commission staff. On January 7, Commission staff reported to Rhythms that Rhythms’ e-mail identifying the issue was forwarded to SBC’s compliance organization and also discussed with SBC on a conference call the previous evening. To date, Rhythms has received no response from SBC on this issue.

*Condition XIII: Multi-State Interconnection and Resale Agreements*

SBC represents that it has complied with the requirements of Condition XIII by development of a multi-state interconnection/resale agreement. Rhythms believes that the Commission’s intention, when imposing that condition, was that SBC’s multi-state agreement would incorporate “best practices” from among the states in the combined region. Instead, SBC’s multistate agreement generally incorporates the worst provisions from any existing agreement. What should have been a “best practices” set of provisions has become a “least favorable to competitors” document. Moreover, SBC is insisting, in all negotiations of second generation interconnection agreements, that the starting point be its multi-state agreement, not the parties’ existing agreement. Rhythms understands that SBC has gone so far as to stop negotiations mid-course, back away from the terms already negotiated and insist that negotiations start anew based on the terms of the multi-state agreement.


## CONCLUSION

In light of the foregoing examples, Rhythms urges the Commission to continue and enhance its oversight of SBC's implementation of the Merger Conditions and take all appropriate measures to ensure that the next annual report is not equally devoid of evidence that SBC is meeting its commitments.

Respectfully submitted,


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Dated: April 28, 2000

I, Stanley M. Bryant, do hereby certify that on this 28<sup>th</sup> day of April, 2000, that I have served a copy of the foregoing document via \* messenger and U.S. Mail, postage pre-paid, to the following:



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